

WT 99-355

FCC 603	FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control	Approved by OMB 3060 - 0800 See instructions for public burden estimate
	DOCKET FILE COPY ORIGINAL	Submitted 11/16/1999 at 11:05AM
		File Number: 0000047879

1) Application Purpose: Transfer of Control	
2a) If this request is for an Amendment or Withdrawal, enter the File Number of the pending application currently on file with the FCC.	File Number:
2b) File numbers of related pending applications currently on file with the FCC:	

Type of Transaction

3a) Is this a <i>pro forma</i> assignment of authorization or transfer of control? No
3b) If the answer to Item 3a is 'Yes', is this a notification of a <i>pro forma</i> transaction being filed under the Commission's forbearance procedures for telecommunications licenses?
4) For assignment of authorization only, is this a partition and/or disaggregation?
5) Does filing request a waiver of the Commission's rules? No
6) Are attachments being filed with this application? Yes
7a) Does the transaction that is the subject of this application also involve transfer or assignment of other wireless licenses held by the assignor/transferor or affiliates of the assignor/transferor (e.g., parents, subsidiaries, or commonly controlled entities) that are not included on this form and for which Commission approval is required? Yes
7b) Does the transaction that is the subject of this application also involve transfer or assignment of non-wireless licenses that are not included on this form and for which Commission approval is required? Yes

Transaction Information

8) How will assignment of authorization or transfer of control be accomplished? Sale or other assignment or transfer of stock If required by applicable rule, attach as an exhibit a statement on how control is to be assigned or transferred, along with copies of any pertinent contracts, agreements, instruments, certified copies of Court Orders, etc.
9) The assignment of authorization or transfer of control of license is: Voluntary

Licensee/Assignor Information

10a) Taxpayer Identification Number: [REDACTED]		10b) SGIN: 000	
11) First Name (if individual):	MI:	Last Name:	Suffix:
12) Entity Name (if not an individual): RADIOFONE, INC.			
13) Attention To:			
14) P.O. Box:	And / Or	15) Street Address: 3131 NORTH I-10 SERVICE RD.	
16) City: METAIRIE	17) State: LA	18) Zip: 70002	
19) Telephone Number: (504)830-1529	20) FAX: (504)834-8293		
21) E-Mail Address:			

22) Race, Ethnicity, Gender of Assignor/Licensee (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Transferor Information (for transfers of control only)

23a) Taxpayer Identification Number: [REDACTED]		23b) SGIN: [REDACTED]	
24) First Name (if individual):	MI:	Last Name:	Suffix:
25) Entity Name (if not an individual): The Stockholders of Radiofone, Inc.			
26) P.O. Box:	And / Or	27) Street Address: 3131 North I-10 Service Road, East	
28) City: Metairie	29) State: LA	30) Zip: 70002	
31) Telephone Number: (504)830-5400		32) FAX:	
33) E-Mail Address:			

Name of Transferor Contact Representative (if other than Transferor) (for transfers of control only)

34) First Name: Richard	MI: D	Last Name: Rubino	Suffix:
35) Company Name: Blooston, Mordkofsky, Jackson & Dickens			
36) P.O. Box:	And / Or	37) Street Address: 2120 L Street, N.W., Suite 300	
38) City: Washington	39) State: DC	40) Zip: 20037	
41) Telephone Number: (202)659-0830		42) FAX: (202)828-5568	
43) E-Mail Address:			

Assignee/Transferee Information

44) The Assignee is a(n): Corporation			
45a) Taxpayer Identification Number: [REDACTED]		45b) SGIN: 000	
46) First Name (if individual):	MI:	Last Name:	Suffix:
47) Entity Name (if other than individual): SBC Communications Inc.			
48) Name of Real Party in Interest:			49) TIN:
50) Attention To:			
51) P.O. Box:	And / Or	52) Street Address: 175 East Houston Street	
53) City: San Antonio	54) State: TX	55) Zip: 78205	
56) Telephone Number: (210)351-3476		57) FAX: (210)351-3488	
58) E-Mail Address: dwatts@corp.sbc.com			

Name of Assignee/Transferee Contact Representative (if other than Assignee/Transferee)

59) First Name: Wayne	MI:	Last Name: Watts	Suffix:
60) Company Name: SBC Communications Inc.			
61) P.O. Box:	And / Or	62) Street Address: 175 East Houston Street	
63) City: San Antonio	64) State: TX	65) Zip: 78205	
66) Telephone Number: (210)351-3476		67) FAX: (210)351-3488	
68) E-Mail Address: dwatts@corp.sbc.com			

Alien Ownership Questions

69) Is the Assignee or Transferee a foreign government or the representative of any foreign government?	No
70) Is the Assignee or Transferee an alien or the representative of an alien?	No
71) Is the Assignee or Transferee a corporation organized under the laws of any foreign government?	No
72) Is the Assignee or Transferee a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	No
73) Is the Assignee or Transferee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country? If 'Yes', attach exhibit explaining nature and extent of alien or foreign ownership or control.	No

Basic Qualification Questions

74) Has the Assignee or Transferee or any party to this application had any FCC station authorization, license or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license, construction permit denied by the Commission? If 'Yes', attach exhibit explaining circumstances.	No
75) Has the Assignee or Transferee or any party to this application, or any party directly or indirectly controlling the Assignee or Transferee, or any party to this application ever been convicted of a felony by any state or federal court? If 'Yes', attach exhibit explaining circumstances.	No
76) Has any court finally adjudged the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition? If 'Yes', attach exhibit explaining circumstances.	No
77) Is the Assignee or Transferee, or any party directly or indirectly controlling the Assignee or Transferee currently a party in any pending matter referred to in the preceding two items? If 'Yes', attach exhibit explaining circumstances.	Yes

78) Race, Ethnicity, Gender of Assignee/Transferee (Optional)

Race:	American Indian or Alaska Native:	Asian:	Black or African-American:	Native Hawaiian or Other Pacific Islander:	White:
Ethnicity:	Hispanic or Latino:	Not Hispanic or Latino:			
Gender:	Female:	Male:			

Assignor/Transferor Certification Statements

1) The Assignor or Transferor certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for <i>pro forma</i> assignments and transfers by telecommunications carriers. See <i>Memorandum Opinion and Order</i> , 13 FCC Rcd. 6293(1998).			
2) The Assignor or Transferor certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.			
79) Typed or Printed Name of Party Authorized to Sign			
First Name: Lawrence	MI: D	Last Name: Garvey	Suffix:
80) Title: Secretary/Stockholder			
Signature: Lawrence D Garvey		81) Date: 11/16/99	

Assignee/Transferee Certification Statements

1) The Assignee or Transferee certifies either (1) that the authorization will not be assigned or that control of the license will not be transferred until the consent of the Federal Communications Commission has been given, or (2) that prior Commission consent is not required because the transaction is subject to streamlined notification procedures for *pro forma* assignments and transfers by telecommunications carriers. See *Memorandum Opinion and Order*, 13 FCC Rcd. 6293 (1998).

2) The Assignee or Transferee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application.

3) The Assignee or Transferee certifies that grant of this application would not cause the Assignee or Transferee to be in violation of any pertinent cross-ownership, attribution, or spectrum cap rule.
 "If the applicant has sought a waiver of any such rule in connection with this application, it may make this certification subject to the outcome of the waiver request.

4) The Assignee or Transferee agrees to assume all obligations and abide by all conditions imposed on the Assignor or Transferor under the subject authorization(s), unless the Federal Communications Commission pursuant to a request made herein otherwise allows, except for liability for any act done by, or any right accrued by, or any suit or proceeding had or commenced against the Assignor or Transferor prior to this assignment.

5) The Assignee or Transferee certifies that all statements made in this application and in the exhibits, attachments, or in documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.

6) The Assignee or Transferee certifies that neither it nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.

7) The applicant certifies that it either (1) has an updated Form 602 on file with the Commission, (2) is filing an updated Form 602 simultaneously with this application, or (3) is not required to file Form 602 under the Commission's Rules.

82) Typed or Printed Name of Party Authorized to Sign

First Name: Wayne	MI:	Last Name: Watts	Suffix:
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83) Title: VP & Asst. General Counsel - Corporate

Signature: Wayne Watts	84) Date: 11/16/99
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WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

Authorizations To Be Assigned or Transferred

85) Call Sign	86) Location Number	87) Path Number (Microwave only)	88) Lower or Center Frequency (MHz)	89) Upper Frequency (MHz)	90) Constructed Yes / No
KKO349					
KLF616					
KLF617					
KNKA352					
KNKN442					
KNKN724					
KNKN866					
KNKQ396					
KNKR209					
KUS289					
KUS290					
KWU380					
WLB943					
WLB945					
WLB946					
WLB947					
WLW446					
WMN848					
WMR386					
WPOL319					

Attachment List

Attachment Type	Date	Description	Contents
Other	11/15/99	FCC Form 603 Attachment A - Response to Item No. 85	17532436.0.pdf
Other	11/16/99	Exhibit 1 - Description of the Transaction	17532482.0.pdf
Other	11/16/99	Exhibit 2	17532485.0.pdf
Other	11/16/99	Exhibit 3	17532491.0.pdf

Response to Item No. 85

In addition to the Call Signs listed in the interactive application, it is respectfully requested that the Commission include Common Carrier Point-to-Point Microwave Service stations WLC240 and WLW537, which are erroneously not included in the Commission's Universal Licensing Database.

**DESCRIPTION OF TRANSACTION, PUBLIC INTEREST
SHOWING AND RELATED DEMONSTRATIONS**

I. INTRODUCTION

These applications seek Commission approval for the transfer of control of certain FCC authorizations held by Radiofone, Inc. and four of its affiliates¹ ("Radiofone") to SBC Communications Inc. ("SBC"). The authorizations relate to CMRS mobile systems located in Louisiana and Michigan near major SBC CMRS systems, as well as to CMRS paging systems in 12 Southern states. The authorizations are for cellular services, PCS services, paging services, point-to-point microwave services, industrial/business radio, and satellite earth stations. A total of seven applications are being filed in connection with this transaction.

This merger will allow SBC, which is one of the nation's leading CMRS providers, to expand its cellular, PCS and paging footprint. The Commission has repeatedly found that the expansion of CMRS systems brings benefits to consumers and is pro-competitive, and this transaction will bring about the same benefits that the Commission has acknowledged in approving similar transactions in the past. Accordingly, the Commission should approve these applications expeditiously.

II. THE PROPOSED TRANSACTIONS

On November 2, 1999, SBC entered into an Agreement and Plan of Merger (the "Merger Agreement") with Radiofone, Inc. and its stockholders, under which RFI, Inc., a

¹ Baton Rouge Cellular Telephone Company, Houma/Thibodaux Cellular Partnership, Radiofone Services, L.L.C. and Radiofone PCS, L.L.C.

wholly owned subsidiary of SBC, would be merged with and into Radiofone, Inc., causing Radiofone, Inc. to become a wholly owned subsidiary of SBC. SBC will thereby obtain control over the licenses and authorizations controlled by Radiofone, Inc. and three of its affiliates, Baton Rouge Cellular Telephone Company, Houma/Thibodaux Cellular Partnership, and Radiofone Services, L.L.C. The identity of the licensees will not change, but SBC will control and become the ultimate parent company of the licensees.² In a separate agreement, on November 11, 1999, SBC agreed to purchase the E Block PCS license for BTA180 (Hammond, Louisiana) from Radiofone PCS, L.L.C., which is under common control with Radiofone.

III. DESCRIPTION OF THE APPLICANTS AND THEIR EXISTING BUSINESS

A. SBC

SBC is a holding company whose affiliates provide local and long-distance phone service, wireless and data communications, paging, high-speed Internet access and messaging, cable and satellite television, security services and telecommunications equipment, as well as directory advertising and publishing. In the United States, SBC's affiliates currently serve 87.3 million voice grade equivalent lines, and SBC is

² Prior to the consummation of the SBC/Radiofone merger, SBC will cause its indirect subsidiary, Ameritech Mobile Communications, Inc. ("AMCI"), to dispose of its non-controlling 11.19% general partnership interest in the Cellular North-Michigan Network General Partnership ("Cellular North"), which operates a B-band cellular system in Michigan RSA 5, where Radiofone is the A-band licensee. If a sale of AMCI's interest in Cellular North to a third party has not been completed prior to the satisfaction of the other closing conditions for the SBC/Radiofone merger, SBC will cause AMCI to make a pro forma transfer of its interest in Cellular North into a fully insulated trust, the trustee of which will independently dispose of the interest. All appropriate FCC filings will be made at the time that AMCI disposes of its interest in Cellular North.

undertaking a national expansion program that will bring SBC service to an additional 30 markets. Internationally, SBC has telecommunications investments in 22 countries.

SBC's CMRS affiliates provide cellular and PCS service to a population of over 93 million persons, both within the 13 states where SBC's affiliates are incumbent local exchange carriers and elsewhere. SBC's CMRS affiliates currently serve over 10.3 million cellular and PCS customers, as well as more than 1.5 million paging customers.

B. RADIOFONE

Radiofone provides cellular service to more than 200,000 customers under its own name in the New Orleans area and under the Cellular One name in the Baton Rouge and Homa/Thibodaux areas and in Michigan RSA 5. Radiofone holds wireless licenses in areas covering nearly 2.4 million persons. Radiofone also provides paging service to approximately 300,000 customers.

IV. PUBLIC INTEREST STATEMENT

A. The Standard of Review

To approve the transfer to SBC of ultimate control of Radiofone's FCC authorizations, the Commission must find that the transfers are consistent with the public interest, convenience and necessity. See 47 U.S.C. § 310(d). In making that finding, the Commission will consider (i) whether the transaction will yield affirmative public interest benefits and (ii) whether the transaction will violate or interfere with the objectives of the Communications Act or the Commission's rules, by reducing competition or otherwise.³

³ In re Ameritech Corp. and SBC Communications Inc., CC Dkt No. 98-141, ¶ 48 (rel. Oct. 8, 1999) ("SBC/Ameritech").

In addition, the Commission must determine whether SBC is qualified to control the FCC authorizations in question.⁴

Many transfer applications on their face show that a transaction will yield affirmative public interest benefit and will not violate the Communications Act or Commission rules, nor frustrate or undermine policies and enforcement of the Communications Act by reducing competition or otherwise.⁵ Such applications do not require extensive review and expenditures of considerable resources by the Commission and interested parties.⁶ This is such a transaction, and the Commission should approve the transfer applications expeditiously.⁷

**B. The Merger Is Consistent with the Public Interest,
Convenience and Necessity**

The Commission should unconditionally approve the transfer of control to SBC of the FCC authorizations held by Radiofone because:

⁴ SBC/Ameritech, ¶ 568; In re Comcast Cellular Holdings, Co. and SBC Communications Inc., DA 99-1318, ¶ 4 (WTB rel. July 2, 1999) ("SBC/Comcast"); In re Southern New England Telecommunications Corporation and SBC Communications Inc., 13 FCC Rcd. 21292, ¶ 26 (1998) ("SBC/SNET").

⁵ See In re Tele-Communications, Inc. and AT&T Corp., 14 FCC Rcd. 3160, ¶ 16 (1999) (citing In re Bourbeuse Tel. Co. and Fidelity Tel. Co., 14 FCC Rcd. 803 (1998)); SBC/Ameritech, ¶ 54.

⁶ See SBC/Ameritech, ¶ 54.

⁷ The Commission has emphasized that a detailed showing of benefits is not required for transactions where there are no anticompetitive effects. The Commission stated in SBC/SNET, ¶ 45, that, in the absence of anticompetitive effects, a detailed showing of benefits is not necessary in seeking approval of a merger. Similarly, as the Commission stated in its approval of the SBC/Telesis merger, where it found that the merger would not reduce competition and that SBC possessed the requisite qualifications to control the licenses in question, "[a] demonstration that benefits will arise from the transfer is not . . . a prerequisite to our approval, provided that no foreseeable adverse consequences will result from the transfer." In re Pacific Telesis Group and SBC Communications Inc., 12 FCC Rcd. 2624, ¶ 2 (1997) ("SBC/Telesis") (emphasis added).

- The merger will yield affirmative public interest benefits in the CMRS market – benefits that the Commission has repeatedly recognized in approving similar transactions;
- The merger will not violate the Communications Act or Commission rules, nor frustrate or undermine policies and enforcement of the Communications Act, either by harming competition or otherwise; and
- SBC is clearly qualified to control the authorizations.

Both before and after the proposed merger, the licensees of the authorizations will be the same. The only change relating to the licenses resulting from the merger will be the substitution of SBC as the ultimate parent company of the licensees.⁸

1. **Public Interest Benefits**

The merger will enhance CMRS service. Consumers will benefit because the combined company will be better able to offer them the benefits of a wider calling scope, including competitive rate plans, in an effective and coordinated manner. Competitors of SBC and Radiofone offer very large CMRS calling scopes within which “home rates” and toll free calling apply. SBC and Radiofone lack an equivalent footprint and thus are at a competitive disadvantage in making similar offerings. The ability of the merged company to offer a larger calling scope through the combination of the areas now served separately by SBC and Radiofone is clearly procompetitive, as the Commission has

⁸ The purchase of the E Block PCS license for BTA180 (Hammond, Louisiana) will result in a change of licensee from Radiofone PCS, L.L.C. to Southwestern Bell Wireless, Inc.

repeatedly recognized in approving other mergers or transfers allowing for larger CMRS systems.⁹

Consumers will enjoy additional benefits beyond those that flow from a larger calling scope. Combining with SBC will enable Radiofone's CMRS operations to achieve greater economies of scale in purchasing network equipment and CPE, which will lower its cost of providing CMRS service and enhance its ability to compete. The combined company will be able to offer consistency of advanced features that can be designed and operated to minimize costs and maximize efficiencies. Radiofone's customers will benefit from SBC's expertise in the design, construction and marketing of advanced cellular and PCS networks.

Indeed, SBC expects to begin deploying digital wireless service in the Radiofone service areas after the consummation of the merger, with a launch of digital service expected in New Orleans sometime next year. The availability of digital services, including short messaging and other features, will both bring new services to Radiofone customers and improve Radiofone's ability to compete with the digital offerings that Radiofone's competitors are making available in New Orleans today.

The addition of Radiofone's paging licenses in the South to SBC's existing paging licenses in the Midwest and adjacent states will benefit consumers as well. The combined company will be able to offer paging customers service over a wider area in an

⁹ SBC/Comcast, ¶ 10; In re Vanguard Cellular Sys., Inc. and Winston, Inc., 14 FCC Rcd. 3844, ¶ 23 (WTB 1999); In re 360 Communications Co. and ALLTEL Corp., 14 FCC Rcd. 2005, ¶ 41 (WTB 1998); SBC/SNET, ¶¶ 44-45; In re Bell Atlantic Mobile Sys., Inc. and Nynex Mobile Communications Co., 10 FCC Rcd. 13368, ¶¶ 44-48 (1995).

effective and coordinated manner, and the combined company will be able to achieve greater economies of scale in purchasing network equipment and CPE.

These are the types of public benefits that the Commission relied on in approving the SBC/SNET and SBC/Comcast mergers.¹⁰ The same result is appropriate here.

2. No Violation of the Communications Act

The proposed transaction would not violate the Communications Act or the Commission's Rules, nor frustrate or undermine policies and enforcement of the Communications Act. The merger, of course, complies with the letter of the Communications Act and the Commission's Rules. In addition, the merger raises no anti-competitive issues and thus is fully consistent with the pro-competitive and deregulatory policies of the Communications Act. As was noted in Part II, above, the only cellular overlap will be eliminated before the merger is consummated, and SBC's paging facilities in the Midwest and adjacent states do not overlap Radiofone's paging facilities in the South.¹¹

¹⁰ SBC/SNET, ¶¶ 44-45; SBC/Comcast, ¶ 10.

¹¹ Some of Radiofone's facilities-based paging operations are located in areas where SBC is a reseller of paging services. The overlaps between Radiofone's facilities-based operations and SBC's resale operations, however, do not give rise to any competitive concerns because, as the Commission has found, "the paging/messaging industry is highly competitive." See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, 14 FCC Rcd. 10145, 10190 (1999). In reaching this conclusion, the Commission noted the numerous competitors – the 25 largest cities in the United States have an average of 29 paging licensees each, not including resellers, while the 25 smallest MSAs have an average of 12 paging licensees each, not including resellers. Id. Moreover, paging faces strong competition from other wireless services, such as digital cellular and PCS, which offer short messaging. Id. In addition, customers can switch providers at low cost, and at least some customers are highly price sensitive. Id. at 10190-10191.

3. SBC's Qualifications

SBC is the parent of FCC licensees that hold numerous FCC authorizations, including the same types of authorizations at issue here. The financial qualifications of SBC are well known to the Commission, and the Commission has repeatedly found SBC qualified to control the kinds of authorizations at issue here.¹² In particular, there can be no issue regarding SBC's qualifications to control the CMRS and other authorizations controlled by Radiofone. SBC is the third largest cellular provider in the United States with service in 23 states plus the District of Columbia and Puerto Rico. SBC also has extensive PCS and paging operations. SBC provides high quality, competitive service to its customers and, as a result, it has a market penetration rate that is significantly above the national average. SBC's experience and capabilities make it well qualified to control the authorizations at issue here.

V. RELATED GOVERNMENT FILINGS

In addition to this filing, SBC and Radiofone are taking steps to obtain other government approvals necessary to consummate the merger. Specifically, the Department of Justice will conduct its own review of the competitive aspects of this transaction, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18A, and the rules promulgated under the Act. SBC and Radiofone will each submit to the Department of Justice and the Federal Trade Commission a pre-merger

¹² International Bureau and Wireless Telecommunications Bureau Grant Consent for Transfer of Control of Licenses of Cellular Communications of Puerto Rico, Inc. to SBC Communications Inc., DA 99-1654 (WTB & IB rel. Aug. 18, 1999); SBC/Ameritech, ¶¶ 568-573; SBC/Comcast, ¶¶ 4 -5; SBC/SNET, ¶¶ 26-28; SBC/Telesis, ¶ 11.

notification form and documentary appendix. SBC and Radiofone also will make appropriate filings with state public service commissions.

VI. ADDITIONAL AUTHORIZATIONS

In addition to seeking the Commission's approval of the transfers of control of the FCC authorizations covered in these applications, SBC and Radiofone are also requesting the additional authorizations described below.

A. After-Acquired Authorizations

While the lists of authorizations specified in the applications for approval of the transfers of control are intended to be complete, Radiofone and its subsidiaries may have on file, and may file for, additional authorizations for new or modified facilities, some of which may be granted during the pendency of these transfer of control applications. For example, several paging applications of Radiofone have been granted pursuant to recent Commission orders, but have not yet been assigned a call sign in the Commission's database and are not yet constructed.¹³

Accordingly, SBC and Radiofone request that the grant of the transfer of control applications include authority for SBC to acquire control of the following items:

- (1) any authorization issued to Radiofone's subsidiaries and affiliates during the Commission's consideration of the transfer of control applications and

¹³ See, e.g., File Nos. D047192-GS to D047215-GS (various locations in Florida, Alabama, Texas, Virginia, Arkansas and Tennessee), granted by order released October 7, 1999 (DA-99-2119); File No. 680345-GS, High Point, Fayetteville and Enka, North Carolina and File No. 680341-GS, St. George, South Carolina, granted by order released October 25, 1999 (DA 99-2283); Call Signs WPFM391 at Richmond and Norfolk, Virginia and WPFN544 at Lynchburg, Virginia, granted additional construction period by order released November 10, 1999 (DA 99-2510).

the period required for consummation of the transaction following approval;

- (2) construction permits held by such licenses that mature into licenses after closing and that may not have been included in the transfer of control applications; and
- (3) applications that will have been filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

Such action would be consistent with prior decisions of the Commission.¹⁴

B. Unconstructed Systems/Antitrafficking Rules

An affiliate of Radiofone holds an authorization for unconstructed PCS facilities; however, no restrictions exist against transferring control of this authorization because this E-Block PCS license was not received through the use of set-asides, installment financings, bidding credits or bidding preferences. See 47 C.F.R. §§ 1.2111, 24.839.

Radiofone also holds authorizations for unconstructed paging facilities.¹⁵ As can be seen in the description of Radiofone's existing paging stations in the accompanying application, these unconstructed facilities are supplemental to a large, established paging system, and the authorizations are being assigned in the context of a much larger transaction. Because the subject authorizations are for CMRS facilities, the processing of this application as it relates to paging stations is governed by Part 22 of the

¹⁴ See, e.g., SBC/SNET, ¶ 49; SBC/Telesis, ¶ 93; In re Applications of Craig O. McCaw and American Tel. & Tel. Co., 9 FCC Rcd. 5836, ¶ 137 n. 300 (1994), aff'd sub nom. SBC Communications Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995), recons. in part, 10 FCC Rcd. 11786 (1995).

¹⁵ See note 12, above.

Commission's Rules. See 47 C.F.R. § 90.493(b). The Commission relaxed the anti-trafficking restrictions on paging licenses several years ago, in recognition of the competitiveness of this industry and the availability of spectrum.

C. Blanket Exemptions to Cut-Off Rules

The public notice announcing SBC's intention to acquire all of the licenses of Radiofone and its subsidiaries (and the PCS license of an affiliate) will provide adequate notice to the public with respect to such licenses, including any for which license modifications are now pending. Therefore, no waiver needs to be sought from Sections 1.927(h) and 1.929(a)(2) of the Commission's rules to provide a blanket exemption from any applicable cut-off rules in cases where Radiofone or its subsidiaries file amendments to pending applications to reflect the consummation of the proposed transfer of control.¹⁶

VII. CONCLUSION

For the foregoing reasons, the Commission should conclude that SBC's purchase of Radiofone serves the public interest, convenience and necessity, and should grant the applications to transfer control of Radiofone's FCC authorizations to SBC.

¹⁶ See In re Ameritech Corp. and GTE Consumer Services Inc., DA 99-1677, n.6 (WTB rel. Aug. 20, 1999); SBC/Comcast, n.3.

Pursuant to 47 C.F.R. § 1.923(e) (West, WESTLAW through October 1, 1999), the Applicants state that this transfer of control application is categorically exempt from environmental processing under 47 C.F.R. § 1.1306 (West, WESTLAW through October 1, 1999) because a mere transfer of control can have no environmental impact.